

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CHIEF HENRY V. TOBIN, III,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C. A. No. 04-1211-MPT
	:	
THOMAS P. GORDON, et al.,	:	
	:	
Defendants.	:	

**ORDER**

At Wilmington this **18<sup>th</sup>** day of **June, 2008**.

Having reviewed the discovery requests by defendant and the responses by plaintiff in relation to a fee petition and litigation costs issue presently being briefed,

IT IS ORDERED that plaintiff shall fully respond to requests number 2, 4 and 6. In light of the issues involved in the briefing, the court considers information requested in those requests to be relevant to those issues and does not consider attorney-client privilege and the attorney work product doctrine applicable to the scope of those issues. Rather, plaintiff has limitedly waived the application of the attorney client privilege and counsel has limitedly waived the application of the work product doctrine on the subject matter of fees/costs. *Novartis v. Pharm. Corp. v. Eon Labs Manufacturing, Inc.*, 206 F.R.D. 396 (D. Del. 2002). The disputed discovery documents are “at issue” and therefore, the attorney client privilege does not prevent their disclosure. *Koppers Co. v. Aetna, et. al.*, 40 F.3d 1240, 63 USLW 2352 (3d Cir. 1994).

IT IS FURTHER ORDERED that production of the documents shall occur

within ten (10) business days of this Order. Within ten (10) business days after production, defendant may file a sur-reply brief limited to ten (10) pages.

/s/ Mary Pat Thyng  
UNITED STATES MAGISTRATE JUDGE